

Exhibit A

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

* * * * *
JOHN HANCOCK LIFE INSURANCE
COMPANY, ET AL
Plaintiffs
VERSUS
ABBOTT LABORATORIES
Defendant
* * * * *

CA-03-12501-DPW

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK

UNITED STATES DISTRICT COURT JUDGE

HEARING

MARCH 30, 2004

APPEARANCES:

BRIAN A. DAVIS, ESQ. AND RAYMOND A. O'BRIEN, ESQ.
Choate, Hall & Stewart, Exchange Place, 53 State
Street, 33rd Floor, Boston, Massachusetts 02109,
on behalf of the Plaintiffs

LAWRENCE R. DESIDERI, ESQ., Winston & Strawn, LLP,
35 W. Wacker Drive, Chicago, Illinois 60601-9703,
on behalf of the Defendant

PETER E. GELHAAR, ESQ., Donnelly, Conroy & Gelhaar,
LLP, One Beacon Street, 33rd Floor, Boston,
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Courtroom No. 1 - 3rd Floor
1 Courthouse Way
Boston, Massachusetts 02210
2:30 P.M. - 3:00 P.M.

Pamela R. Owens - Official Court Reporter
John Joseph Moakley District Courthouse
1 Courthouse Way - Suite 3200
Boston, Massachusetts 02210
Method of Reporting: Computer-Aided Transcription

1 CA-03-12501-DPW

2 MARCH 30, 2004

3 THE CLERK: Counsel, come forward and identify
4 yourself for the record.

5 MR. DAVIS: Your Honor, I am Brian Davis from
6 Choate, Hall & Stewart here in Boston. With me is Ray
7 O'Brien. We represent the plaintiffs, John Hancock.

8 MR. GELHAAR: Peter Gelhaar for Abbott, Your
9 Honor.

10 MR. DESIDERI: Lawrence Desideri for Abbott,
11 Your Honor.

12 THE COURT: I guess I need a little
13 explanation of why this isn't just a basic contract
14 dispute that I'm going to deal with on the language
15 itself.

16 MR. DAVIS: Yes, Your Honor. Again, Brian
17 Davis representing John Hancock. Perhaps I can put some
18 of it in perspective by explaining what the agreement is
19 about --

20 THE COURT: Right.

21 MR. DAVIS: -- and what's happened between the
22 parties. The basic agreement that was entered into by
23 John Hancock and Abbott back in March of 2001 is called
24 a Research Funding Agreement. And pursuant to the terms
25 of the agreement, Hancock agreed to give Abbott up to

1 214 million dollars over the four-year program term of
2 the agreement. And that provided that money was to be
3 vested in the research and development of nine compounds
4 that are specified in the agreement. Essentially, it's
5 a portfolio of compounds that would be supported by
6 these payments. The portfolio compounds are essentially
7 drugs under development for cancer or for pain killers,
8 all of that. And the way the agreement worked is that
9 as those program compounds progressed over the course of
10 the agreement, those that were successful, Hancock would
11 receive royalties on the monies that Abbott received in
12 selling those drugs over a period of time. And Hancock
13 would also receive certain milestone payments.

14 The way the agreement was set up as well is
15 that Abbott was required to spend on those program
16 compounds. It wasn't just Hancock. So, Hancock was
17 contributing to the cost of developing those, but is not
18 the only one. And the way the parties set up the
19 agreement was that program spending, the spending on the
20 compounds was essentially equated with the parties'
21 anticipation of success of those compounds. So that if
22 Abbott kept spending on the drugs, that was a good sign
23 for Hancock that the drug still had potential and that
24 Hancock should continue to invest in the drugs because
25 Hancock's payments are made over the life of the

1 agreement. And if Abbott -- the agreement also provides
2 that if Abbott were to reduce its spending below certain
3 minimum thresholds, that Hancock wouldn't have to pay
4 any longer because that was considered to be a sign that
5 the drugs didn't hold as much promise as they originally
6 thought. And the --

7 THE COURT: So, what's the breach here? The
8 breach is that Abbott went below the thresholds, right?

9 MR. DAVIS: Effectively, Your Honor, is the
10 contract operating according to its normal terms?
11 Because Abbott said that they weren't going to spend up
12 to the required threshold. And that once they announced
13 that, that Hancock's obligation to make further payments
14 terminated. However, Abbott is aware of the fact that
15 that those aren't the only disputes that existed between
16 the parties. And we're here today because there were a
17 series of disputes that arose, including some disputes
18 about whether the program compounds among the nine
19 compounds that were supposed to have a reasonable chance
20 of success at the time that the agreement was entered
21 into, whether all of those really had a reasonable
22 chance of success. And those issues have been discussed
23 between the parties. We weren't able to reach agreement
24 on those. We filed a DJ action because Abbott announced
25 its intention to sue us under the contract. The

1 contract provides exclusive jurisdiction here in
2 Massachusetts.

3 THE COURT: Well, I guess if it's a question
4 of did they go below the threshold or not, that's garden
5 variety contract. If it's reasonable opportunity for
6 success in pharmaceutical compounds, that's a different
7 issue. And I just want to understand which of these are
8 involved. I mean, my initial read of the complaint was
9 it's a contract about a lot of money, but simply a
10 contract.

11 MR. DAVIS: The issue that's before the Court
12 right now, Your Honor, is really a matter of the
13 contract. I guess the point I was making is that there
14 were other disputes. We didn't paint them in a DJ
15 action because it depends on our ability to look at some
16 of the program development documents. And we asked for
17 those from Abbott. And by the time we filed this
18 action, we didn't have them. So we don't know what --

19 THE COURT: Well, are you planning on amending
20 the complaint?

21 MR. DAVIS: We may, Your Honor. We were
22 planning on -- we have certain audit rights under the
23 agreement. We plan on looking at those documents and
24 examining whether the concerns that we have are
25 legitimate. And if they're legitimate, then yes, we'll

1 be moving to amend. Again, the reason why we filed when
2 we did was Abbott said they were going to sue us, but it
3 wasn't that they were going to sue us in Massachusetts
4 as the contract provided. So, we filed a declaratory
5 judgment action because Abbott wouldn't commit to suing
6 us in Massachusetts which has exclusive jurisdiction
7 under these. So that's why we filed the suit. We may
8 very well have been -- there's some basic discovery that
9 I think we need to do in order to determine whether our
10 other concerns are justified. It really has to do with
11 the development of these program compounds. If they
12 prove to be unjustified with a basic contract dispute,
13 if they prove to be justified, they may be, but it's
14 more complex. And that's the basis for the differences
15 between the parties regarding timing.

16 THE COURT: Then, Mr. Gelhaar, what's the --

17 MR. GELHAAR: It's actually Mr. Desideri, Your
18 Honor.

19 THE COURT: Okay. Mr. Desideri?

20 MR. DESIDERI: Good afternoon, Your Honor.

21 THE COURT: So, are we waiting around to
22 figure out whether or not Hancock has got some other
23 claims here?

24 MR. DESIDERI: No, Your Honor. From Abbott's
25 perspective, this is simply the case that is pled in the

1 pleadings as they exist. Abbott believes that it has
2 and will meet all spending obligations that exist under
3 the contract and we believe that's the principal issue
4 in the case. We did learn fairly recently that Hancock
5 had some other questions based on a document or letter
6 that they had for a couple of years. But from our
7 perspective, this is simply a contract dispute as framed
8 in the pleadings. And I will say that Abbott did commit
9 in the contract to venue here in Boston and recognizes
10 there can be a hearing and was never going
11 to --

12 THE COURT: It's a matter of indifference to
13 me. The issue is really just scheduling. I mean,
14 there's a kind of reluctant debutante quality to the
15 joining of issues here. And I want to understand when
16 they are going to be joined so I can set up a schedule
17 for dealing with it. What I don't want to do is get
18 an opportunity to unburden myself about the spending
19 obligations in the contract and then be provided with
20 additional kind of disputes that I have to resolve
21 unless there's some special reason to do it that way.
22 So, I really want to figure out what you want for a
23 realistic schedule.

24 MR. DESIDERI: We think realistically, Your
25 Honor, because we perceive this as a relatively narrow

1 contract dispute and because even damages in this case
2 is not a very complex issue because we're arguing merely
3 over well-defined payments --

4 THE COURT: What if they introduce this other
5 set --

6 MR. DESIDERI: I'm sorry?

7 THE COURT: What if they introduce this other
8 set of issues having to do with compounds?

9 MR. DESIDERI: I'm not sure exactly how
10 broadly what they intend to do, but it would certainly
11 broaden their discovery in the case. But since I don't
12 know what it is exactly that they're claiming --

13 THE COURT: How long is it going to take you
14 to get this figured out?

15 MR. DAVIS: Your Honor, the initial round of
16 discovery on the program compounds, the development of
17 compounds will tell us whether we have our disputes.
18 So, I would think that approximately three or four
19 months of discovery on those issues, assuming that we
20 get what we want there.

21 THE COURT: Any problem with that?

22 MR. DESIDERI: Yes, Your Honor. Because,
23 obviously, we are the party who is seeking the money
24 that Hancock is holding that was due us under the
25 contract, we were hoping more like four months for the

1 entire fact discovery. We believe that if one were to
2 seek all documents, both relating to this entire
3 contract and science, there's a lot of documents.
4 And it would be very time-consuming and burdensome.
5 But there's an issue that's presently framed in the
6 complaint and in the answer. Hancock could have filed a
7 better claim if it sought to bring -- with the way the
8 pleadings are framed now, we don't believe discovery
9 into every conceivable science or each compound is
10 warranted given the parameters of the parties' dispute.

11 THE COURT: Well, I suppose it comes down to
12 this. If you can't agree upon a method of resolution, I
13 take the complaint as it's drawn, as it stands now, and
14 resolve that. And if another case has to be brought,
15 another case has to be brought. It's not a vehicle for
16 providing generalized discovery into the parties'
17 relationship. You filed a lawsuit. The lawsuit
18 identifies what the issues are. If you have some other
19 thoughts and think that you're entitled to some form of
20 informal discovery -- but you're not entitled to
21 discovery in this case with respect to those compounds
22 on the basis of the complaint as it's drawn right now.

23 So this, as far as I'm concerned, is limited
24 to the declaratory judgment action as presently framed.
25 And as presently framed, I don't know what else you need

1 in the way of discovery. Can't it all be stipulated?

2 MR. DAVIS: Your Honor, may I address that for
3 a moment?

4 THE COURT: Yes.

5 MR. DAVIS: First, I think that the way that
6 the complaint is currently framed, it does, in fact,
7 implicate development programs for compounds. Because
8 what Abbott was intending to spend and when is really a
9 function of what they were doing with respect to the
10 various program compounds.

11 THE COURT: The issue, as I see the complaint
12 -- maybe you'll direct me to different language or I'll
13 understand this language differently. But Abbott is
14 supposed to make certain kinds of anticipated spending.
15 Presumably that's identified with some particularity in
16 the contract. It says Section 3.4. And there's nothing
17 here about some basis for Hancock to inquire into why it
18 is that Abbott isn't making the spending, is there?

19 MR. DAVIS: Your Honor, I think I just heard
20 Mr. Desideri say that they, in fact, do intend to spend
21 according to what's required under the contract.

22 THE COURT: Right.

23 MR. DAVIS: We have a dispute about that.

24 THE COURT: Right. But isn't that -- I mean,
25 the parties seem to want to make it more complex or,

1 more accurately, use this declaratory judgment as a
2 springboard for a bunch of other disputes. Abbott wants
3 to delay that. Okay. You want to use it in some
4 fashion to get into other disputes. But I want to
5 resolve what's before me. And if you -- for Rule 11
6 purposes -- can't bring that claim right now and it
7 doesn't look like there's a reasonable period of time
8 within which you can bring that claim, then I might as
9 well get to this kind of garden variety contract issue,
10 shouldn't I?

11 MR. DAVIS: Your Honor, I agree. But I would
12 add, however, just simply that we will be conducting an
13 audit as we're entitled to do under the contract. That
14 may give us grounds independent as well because we're
15 entitled to look at the program development documents
16 with respect to the audit. So we'll be commencing that
17 in the near future. And we expect Abbott to comply
18 with its obligations under the agreement. If what I
19 understand Your Honor to be saying is what you have in
20 front of you is what you intend to resolve now, I'm
21 not saying that --

22 THE COURT: Well, after listening to all of
23 this, you can file another lawsuit.

24 MR. DAVIS: But will Your Honor -- if I
25 understand Your Honor correctly, that if we do in the

1 meantime hit upon information that leads us to believe
2 that we have these other claims, you're not precluding
3 us from seeking to amend?

4 THE COURT: Maybe. It depends on how fast
5 this goes. I mean, I don't -- now I'm back to this
6 question on what I'll call the core dispute. What's to
7 discover?

8 MR. DAVIS: In part, Your Honor, what they
9 intend to spend on what, over what period of time,
10 because they -- again, Abbott has taken the position
11 that they will meet the targets that are set forth in
12 the agreement. We believe that not to be correct. And
13 if they don't meet those targets, then our obligation to
14 pay is terminated.

15 THE COURT: Well, why -- I mean, I listen to
16 this now as a declaratory judgment action which is
17 obviously an equitable action. And it's not available
18 for people who want to speculate about what the other
19 side is going to do. Have they failed to meet their
20 obligations from your perspective right now?

21 MR. DAVIS: Your Honor, we believe that they
22 have. But they deny that.

23 THE COURT: Well, but maybe I'm living in a
24 fool's paradise about this. So, the standards require
25 them to spend "X" dollars, right?

1 MR. DAVIS: Or to plan to spend, Your Honor.
2 It's not just what they spend to a certain point in
3 time. What the agreement provides is they have to tell
4 us what they intend to spend in the future. And that's
5 where they have fallen short and that's what they deny.
6 Because they say that they are, in fact, going to hit
7 the aggregate spending target which is defined in the
8 agreement as 16 hundred and 14 million dollars. We
9 don't think that that's the case. And, so, there will
10 need to be discovery on what Abbott, in fact, intends to
11 spend, what they have planned to spend, and what they
12 plan to spend it on because the agreement also provides
13 what are permissible spending -- what they are permitted
14 to spend the money on. So, there's a dispute --

15 THE COURT: Why isn't this just an
16 anticipatory breach problem? You know, you're unsettled
17 about their likelihood of spending the money according
18 to the --

19 MR. DAVIS: Well, I'm unsettled, Your Honor,
20 by the fact that they deny it. I mean, we have
21 quantitated the fact it wasn't. It wasn't in dispute.
22 But Abbott has turned around and said no. In fact,
23 contrary to the information that they provided to us in
24 the past, they do, in fact, intend to spend.

25 THE COURT: Okay.

1 MR. DAVIS: So, I understand Your Honor's
2 concern about trying to resolve this as a contractual
3 matter.

4 THE COURT: So, what am I being asked to do,
5 to decide whether or not they are lying to you now?

6 MR. DAVIS: I guess, Your Honor, what we have
7 to resolve as a factual matter is what they actually
8 intend to spend, what they planned on spending on these
9 compounds over the term of the agreement. And, again,
10 I'd be happy to stake out our position on that point.
11 We have -- Abbott disputes it, so I don't know how we
12 resolve it other than conducting some discovery and
13 then presenting the disputed facts to Your Honor for
14 resolution.

15 THE COURT: As I understand it, this is a
16 lawsuit that was brought because you were concerned they
17 were going to bring a lawsuit in the wrong jurisdiction.
18 It raises matters of real speculation because there has
19 not yet been a breach and there is a statement by Abbott
20 that they're going to make it. Now, Abbott's statement
21 may give rise to forms of misrepresentation claims, 93A
22 claims, a whole series of other kinds of claims. But it
23 hasn't done it yet.

24 MR. DAVIS: Your Honor, we have discussed this
25 at length with Abbott and a real dispute exists. We

1 have documentation from Abbott that, taken on its face,
2 means we don't have to pay. When we brought that to
3 Abbott's attention, Abbott then turned around and said,
4 "No, you're wrong, you do need to pay." And, again,
5 they threatened us with litigation to force us to make
6 the next program payment. So, this was not speculative.
7 We had Abbott telling us that they were going to sue us.
8 And when we said "where will you sue us" because there's
9 exclusive jurisdiction in Mass., they said "we're not
10 telling you." So, based on that, that's why we filed
11 a DJ action. And really, Your Honor, I'm not trying to
12 be difficult. That's what we understand to be the
13 position, relative positions of the parties. We have a
14 dispute over whether, in fact, we have the obligation to
15 make this program payment. We've talked with them at
16 length in an attempt to resolve the dispute. It's
17 apparent that the parties are at logger heads. They
18 have different interpretations of the agreement to date.
19 They dispute that what they told us before is accurate.
20 We have to resolve that dispute.

21 THE COURT: And that seems to me to be all
22 papered. That's the document, review of the document,
23 isn't it? I don't know why, you know, this kind of --
24 there's obviously a breakdown in relationship. But for
25 juridical purposes, I don't know what it is that you're

1 really asking except to use this as a vehicle for some
2 more discovery and to augment your audit rights.

3 MR. DAVIS: No, Your Honor. We could have
4 exercised the audit rights independent of a lawsuit.

5 THE COURT: So, why haven't you? This was
6 filed on December 12th. Why haven't you done it by now?

7 MR. DAVIS: Because, Your Honor, we have to
8 line up the auditors necessary to do that.

9 THE COURT: No problem with lining up the
10 Court. You could just drop something into the Court and
11 expect to have a resolution at some point. You can
12 spend the Court's time while you guys figure out exactly
13 what you want to do.

14 Let me tell you: Declaratory judgment is
15 available, but it's discretionary. And what I'm
16 listening to now strikes me as suggesting that it may be
17 improvident until you've got some real dispute that has
18 been crystallized here, not back and forth, but real
19 dispute.

20 MR. DAVIS: Your Honor, I point out that
21 Abbott, I believe in its answer, acknowledged the
22 existence of a dispute. They don't deny that.

23 THE COURT: What is the dispute from Abbott's
24 point of view?

25 MR. DESIDERI: Your Honor, could I clarify

1 this?

2 THE COURT: Sure.

3 MR. DESIDERI: Payments that were scheduled to
4 be due under the contract were as follows. Hancock was
5 scheduled to make the payment this last December, a very
6 large payment to Abbott. Things were going very well
7 under this contract. There were no problems between the
8 party whatsoever. Sometime in October, Abbott received
9 out of the blue a letter from Hancock saying, "guess
10 what, we don't owe you any more money." The December
11 payment date came and went. So, Abbott has counter-
12 claimed for breach of contract for Hancock's failure to
13 pay the first payment. We have sought a declaratory
14 judgment on the second payment because the issues are
15 very similar. Now, the second payment is not due until
16 the end of this year.

17 THE COURT: And is the reason for non-payment,
18 as you understand it, that they do not anticipate you're
19 going to pay the money -- put in the money that provides
20 the benchmark or whatever you --

21 MR. DESIDERI: Absolutely. That's what the
22 letter says, "that your failure to comply" -- I think
23 Your Honor is correct that the issue here in this case
24 as is set forth in the claims is whether Abbott is going
25 to spend the minimums it is required to spend under the

1 contract during the time frames contemplated by the
2 contract. And there is no overarching or broad
3 discovery required to resolve it.

4 THE COURT: What's needed to resolve that
5 issue?

6 MR. DESIDERI: I think that ultimately, Your
7 Honor, we may end up -- I think we do have the issue of
8 contract interpretation on which I think we would like
9 discovery of the drafts of the contract and the internal
10 -- the internal interpretations given by Hancock to the
11 contract and the other discovery that we thought would
12 be necessary.

13 THE COURT: You mean it's not a clear
14 contract?

15 MR. DESIDERI: Well, the parties certainly
16 dispute one provision.

17 THE COURT: That doesn't make it ambiguous,
18 that there's a dispute.

19 MR. DESIDERI: Not necessarily. I agree with
20 Your Honor. That does not make it.

21 The other thing I think that we would seek in
22 limited discovery is the course of dealing among the
23 parties. In other words, how did each party interpret
24 it as they went along? And we think that discovery
25 could be useful to us in discerning that Hancock

1 interpreted the contract as we did and it wasn't until
2 late in October when they decided they didn't want to
3 pay us for some reason, that all of a sudden we weren't
4 going to meet all the amendments.

5 THE COURT: So, how long do you anticipate
6 your discovery?

7 MR. DESIDERI: Four months.

8 THE COURT: Can you do your contract discovery
9 -- that basic discovery -- in the same time period?

10 MR. DAVIS: In the four-month period -- the
11 contract discovery?

12 THE COURT: Yes.

13 MR. DAVIS: Yes, Your Honor. I can be in a
14 position to tell Your Honor whether we have other
15 disputes within that four-month period.

16 THE COURT: Well, I'll be interested to hear
17 because that's a related case. But it's likely to be a
18 different case than this one.

19 MR. DAVIS: Your Honor, may I make one other
20 point?

21 THE COURT: Sure.

22 MR. DAVIS: I just want to point out it's not
23 anticipatory in the sense that Abbott has an obligation
24 each year to tell us what they anticipate spending. So,
25 each year they have that obligation.

1 THE COURT: When do they have to do that?

2 MR. DAVIS: When? They have to do it 45 days
3 before the end of the year in an annual spending claim
4 that they're supposed to submit, Your Honor.

5 THE COURT: And did they submit one to you?

6 MR. DAVIS: Your Honor, they did submit an
7 annual spending plan for 2003, but they're supposed to
8 give it to us before the end of 2002. We didn't get the
9 final spending plan until September of 2003 and that is
10 what triggered Hancock's realization that they weren't
11 going to meet the --

12 THE COURT: Is this a calendar year?

13 MR. DAVIS: It's on a calendar year. The
14 program year is on a calendar year.

15 THE COURT: So, you waited nine months before
16 you raised their failure to give you 45 days in advance
17 of the end of the calendar year?

18 MR. DAVIS: No, Your Honor. Hancock had
19 requested the plans earlier. They just hadn't received
20 them from Abbott.

21 THE COURT: Well, you requested them, but
22 waited until nine months.

23 MR. DAVIS: We reminded them of the fact that
24 we wanted them and they sent them along in September.

25 THE COURT: Okay. So, are they in breach of

1 the 2004 one now? Is that it?

2 MR. DAVIS: Again, Your Honor, I wouldn't use
3 the term "breach" because it's our -- our declaratory
4 judgment is simply seeking to apply the contract as we
5 understand it's supposed to work, which is that once
6 they tell us that they're not going to spend, once they
7 form that intention, then our obligation to make further
8 payments terminates automatically. That's the
9 declaratory judgment that we're seeking, is that they've
10 made that determination; therefore, our further
11 obligations are terminated. So, I wouldn't regard that
12 as a breach. We didn't accuse them of breach. We
13 just want an interpretation. They disagree with that
14 interpretation of the agreement. And that's the
15 dispute. And that is the dispute that existed that we
16 had a good faith agreement on.

17 THE COURT: Does the contract actually require
18 that they make this disclosure 45 days before the end --

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: And they haven't made it?

21 MR. DAVIS: They made it for 2003 in the fall
22 of 2003. They provided what they regarded as a
23 preliminary spending plan in 2002. When we got the
24 final one in September of 2003, it showed that they fell
25 below the spending target. And they announced --

1 THE COURT: Do you dispute that --

2 MR. DAVIS: Yes.

3 MR. DESIDERI: I don't believe it showed that
4 we fell behind in the --

5 THE COURT: Okay. Well, so four months of
6 discovery on this. At some point, the parties will
7 figure out exactly what they really want to dispute here
8 and what's really in dispute on it. We're not going to
9 get into the pharmaceutical compounds or anything like
10 that. This really is focused on the question -- I want
11 to use the terms that the parties seem to be using -- of
12 whether or not termination of Hancock's obligation as a
13 result of shortfalls in aggregate spending targets is
14 well-founded. I mean, isn't that what it is?

15 MR. DAVIS: Your Honor -- yes, Your Honor. As
16 currently pled, it is. So I'm clear, Your Honor, as I
17 understand it, if we believe that we have other
18 disputes, should I seek to amend or should I file a
19 separate action?

20 THE COURT: I guess my --

21 MR. DAVIS: Because I want to make sure I'm
22 not precluded, Your Honor, from bringing those claims at
23 a later point in time by some argument by Abbott that
24 they should have been brought in this action and were
25 not.

1 THE COURT: Oh, please. The short of it is --
2 are you going to plead that?

3 MR. DESIDERI: Am I going to say that?

4 THE COURT: Yes.

5 MR. DESIDERI: I didn't plan on it.

6 THE COURT: Well, he's not going to say that.
7 It's simply not going to happen.

8 MR. DAVIS: Understood.

9 THE COURT: Once it's ripe, you bring it. You
10 don't have to worry about relation-back and all of that
11 sort of thing.

12 MR. DAVIS: Understood.

13 THE COURT: But you file a lawsuit. You try
14 to get it in some sort of reasonable order promptly.
15 And if you've got other disputes, maybe you'll bring
16 another lawsuit. But I don't see it happening within
17 the four months if you haven't even asked for your audit
18 rights yet after commencing the dispute in December of
19 last year, the dispute here.

20 So, four months to complete discovery, which
21 is July 30th. I don't think there are experts involved
22 in this contract interpretation. I'm not even sure that
23 there's parol evidence, although you can spend time
24 trying to figure out if there is. But I don't see any
25 experts on this issue, do you? Do either of you?

1 MR. DESIDERI: I can't think of any, Your
2 Honor.

3 MR. DAVIS: Right now, Your Honor, we
4 wouldn't anticipate having experts on the contractual
5 interpretation issue.

6 THE COURT: Okay. Well, that's what this
7 essentially is, although you're getting some additional
8 discovery on the question of course of dealing and
9 background information and what their real anticipations
10 are.

11 So, then dispositive motions on that by
12 September 17th. Is that okay?

13 MR. DAVIS: Yes, Your Honor.

14 THE COURT: Okay. And I would expect them to
15 be cross motions and you both get to reply. And that's
16 it for the pleadings. There's no reply or anything like
17 that. So, you both file cross motions for summary
18 judgment as to these issues.

19 And with respect to these other disputes, if
20 they crystallize, I suspect they'll be brought in
21 another lawsuit. Now, is there anything else that we
22 need to talk about on this?

23 MR. DAVIS: No, Your Honor.

24 MR. DESIDERI: No, Your Honor.

25 THE COURT: Oh, one other thing. Everything

1 from now on should be done with electronic filing here.
2 So we'll anticipate that that's what you're going to be
3 doing.

4 MR. DESIDERI: Yes, sir.

5 THE COURT: I suspect that when it comes time
6 for the summary judgment motions, I'll want courtesy
7 copies, hard copies as well. But you file, so that we
8 have docketed all of the papers, by electronic filing.
9 Okay?

10 MR. DAVIS: Understood, Your Honor.

11 THE COURT: All right. Thank you.

12 RECESSED AT 3:00 P.M.

13

14 C E R T I F I C A T E

15 I, PAMELA R. OWENS, Official Court Reporter,
16 U. S. District Court, do hereby certify that the
17 foregoing is a true and correct transcription of the
18 proceedings taken down by me in machine shorthand and
19 transcribed by same. I certify that the transcript fees
20 charged and the page format used by me comply with the
21 requirement of this Court's court reporter plan and the
22 requirements of the Judicial Conference of the United
23 States.

24

Pamela R. Owens 4/6/04

25

O'Brien, Raymond

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United States District Court
District of Massachusetts

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